

art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification. In re Gordon, 733 .2d 900, 902. In the instant case, the Booth reference discloses an ophthalmic device for ocular treatment that releases an electrodynamic spray. Nowhere in the Booth reference does it envision an embodiment where there is an absence of an electrical potential imposed on the solution, as is in the case of the instant claims. Booth attempts to deliver the maximum ophthalmic solution past the tear film by charging the solution to be delivered to the targeted site.

Not only does the Booth reference require the administration of an electrically charged ophthalmic solution, but additionally requires administration provided in the form of a spray. Booth does not envision an embodiment where the method of discharge is anything other than spray. Nor does Booth suggest alternative delivery methods of the ophthalmic solution in other forms such as jet or stream. Such sprays not only lack the momentum required in the instant claims, but such sprays also disperse over a wider distance which teaches away from Applicants' invention of having the jet or each droplet of a size sufficient to sustain momentum along a substantially horizontal path. The jet or stream can be directed or targeted at a chosen site in the eye, where the active compound can be most readily absorbed. See Specification page 3 ¶ 1. Booth's use of a spray is wholly inapposite of the Applicants' claimed invention.

Additionally, the Examiner points out the Booth reference lacks only the Applicants' claimed droplet diameter and discharge velocity, and that there is no evidence of record to demonstrate the advantage of the claimed dosage form over any other dosage form that has been administered in droplet spray form. However, it is submitted that the Examiner has not met the prima facie burden of obviousness with respect to all claims since the underlying reference is so deficient, that even if the Examiner's proposed modifications were done, the resulting device would not be the Applicants' claimed invention, but rather an electrodynamic spray, which is wholly inapposite of that which is claimed by Applicants.

Prima Facie Case of Obviousness not Met by Examiner

Nowhere in the Booth reference does it teach an ocular device void of the electrodynamic causing portion of the device. The electrodynamic causing portion of the Booth invention is paramount to delivery

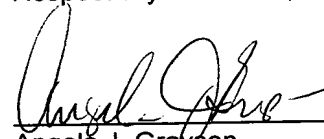
of the ophthalmic formulation to the eye. Therefore, Examiner has not met the prima facie burden of obviousness and it is respectfully requested that all rejections be withdrawn.

Applicants respectfully request that a timely Notice of Allowance be issued in this case.

If any fee is required for the filing of this response, including extensions of time for which Applicants hereby petition, please charge all such required fees to Deposit Account No. 500329.

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Respectfully submitted,



Angela J. Grayson
Attorney For Applicants
Registration No. 54,136

Agouron Pharmaceuticals, Inc./A Pfizer Company
Patent Department
10777 Science Center Drive
San Diego, California 92121
Phone: (858) 622-8872
Fax: (858) 678-8233